



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

# **Decision**

**Matter of:** Alpha Building Corporation

**File:** B-242576

**Date:** April 23, 1991

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Kathleen Acock for the protester.

Edward A. Vigil for ABT Service Corporation, and Lacy S. Curry for Curry Contracting Co., Inc., interested parties. Major Robert L. Martin, Esq., and Millard F. Pippin, Department of the Air Force, for the agency.

Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Protest against a small disadvantaged business (SDB) set-aside for a Simplified Acquisition of Base Engineering Requirements contract is denied where the acquisition is covered by the Small Business Competitiveness Demonstration Program Act of 1988, 15 U.S.C. § 644 note (1988), which provides, on a test basis, for the issuance of solicitations on an unrestricted basis in four designated industry groups where agency's small business participation goals have been met, but specifically exempts procurements set aside for SDB concerns pursuant to section 1207 of the Defense Authorization Act of 1987, 10 U.S.C. § 2301 note (1988).

2. Agency decision to set aside procurement for small disadvantaged business (SDB) concerns was proper where contracting officer determined there was a reasonable expectation that offers would be obtained from at least two responsible SDB firms at prices which will not exceed the fair market price by more than 10 percent.

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## **DECISION**

Alpha Building Corporation protests the Department of the Air Force's decision to set aside for small disadvantaged business (SDB) concerns request for proposals (RFP) No. F22600-91-R-0019, for maintenance, repair, and minor construction services referred to as Simplified Acquisition of Base Engineering Requirements (SABER) for the Keesler Air Force Base, Mississippi. Alpha, the small business incumbent contractor, principally contends that the Small Business Competitiveness

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Demonstration Program (SBCDP) Act of 1988, 15 U.S.C. § 644 note (1988), and the implementing Defense Federal Acquisition Regulations (DFARS) § 219.502-72, which provide for a test of unrestricted competition in four designated industries, do not include the SABER program. The protester also contends that the set-aside is improper because the contracting officer failed to establish that the agency could expect to obtain offers from at least two responsible SDB concerns at a price not exceeding the fair market price by 10 percent.

We deny the protest.

By Commerce Business Daily (CBD) synopsis of November 28, 1990, the Air Force indicated it was considering setting aside the procurement for SDBs, and requested interested SDB firms to submit evidence of their ability to perform the SABER contract. The agency received 15 responses from SDBs, three of which submitted the requested information, and four of which indicated that they were currently performing SABER contracts at other Air Force bases.

Alpha primarily objects to the SDB set-aside on the ground that the SBCDP Act and the implementing DFARS provisions do not apply to work performed under the SABER program; therefore, under DFARS § 219.502-72(b)(1), it is improper to issue a total SDB set-aside for a service which has been previously acquired successfully by the contracting office on the basis of a small business set-aside.

The SBCDP Act establishes a demonstration program under which solicitations in four designated industry groups are to be issued on an unrestricted basis where the agency has attained its small business participation goals. 15 U.S.C. § 644 note. The SABER program falls within a designated industry group, construction, as defined under implementing Federal Acquisition Regulation (FAR) § 19.1005(a)(1), thus the SBCDP Act is clearly applicable, and a small business set-aside is no longer appropriate for this requirement. John Bowman, Inc., B-239543, Aug. 28, 1990, 90-2 CPD ¶ 165. The SBCDP Act specifically provides, however, that set-asides for SDBs under section 1207 of the 1987 Defense Authorization Act, which DFARS § 219.502-72 implements, are exempt from the demonstration program. See Kato Corp., 69 Comp. Gen. 374, (1990), 90-1 CPD ¶ 354. Accordingly, the Air Force's decision to conduct this SABER procurement as an SDB set-aside does not violate the SBCDP Act or its implementing regulations.

The protester also contends that the SDB set-aside is improper because the contracting officer had no basis to conclude that at least two responsible SDB concerns would submit offers at a price not exceeding the fair market price by 10 percent.

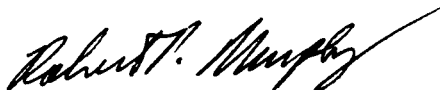
The regulations implementing the Department of Defense (DOD) SDB program, set forth in the DFARS, part 219, provide that a procurement shall be set aside for exclusive SDB participation if the contracting officer determines that there is a reasonable expectation that: (1) offers will be obtained from at least two responsible SDB concerns, and (2) award will be made at a price not exceeding the fair market price by more than 10 percent. DFARS § 219.502-72(a). The regulations also provide that the contracting officer should presume that these requirements are met if the acquisition history shows that: (1) within the past 12-month period a responsive offer from at least one SDB concern was within 10 percent of the award price on a previous procurement of similar supplies or services, and (2) the contracting officer has reason to know (from the activity's relevant solicitation mailing list, response to presolicitation notices, or other sufficient factual information) that there is at least one other responsible SDB source of similar supplies or services. DFARS § 219.502-72(c).


We review a decision to conduct a procurement as an SDB set-aside to determine if the contracting agency had a reasonable basis to so restrict competition. John Bowman, Inc., B-239543, supra. Here, the contracting officer had a reasonable expectation that offers would be received from at least two responsible SDBs at a price not exceeding fair market price by 10 percent, as a result of the SDB responses to the presolicitation notice and the fact that four SDBs are performing SABER contracts for other bases. Fifteen SDBs responded to the presolicitation notice, three of which demonstrated their responsibility by submitting the relevant information, and four of which had, or are currently performing, SABER contracts on other bases. These responses from SDBs provide a sufficient basis on which to conclude that there is a reasonable expectation of receiving at least two offers from responsible SDBs.

Since SDBs are currently performing SABER contracts on other bases and, as previously stated, award cannot be made to an SDB at a price exceeding fair market price by 10 percent, the contracting officer has sufficient information to expect that offers from SDBs under this procurement will also not exceed fair market price by 10 percent. Alpha argues that SABER contracts for other bases are not comparable since the contract contemplated for Keesler Air Force Base will incorporate four individual and remote entities, each of which will manage its own contracting for delivery orders and provide payment from separate offices. However, the DFARS does not require an acquisition history of identical contracts, only similar procurements. See DFARS § 219.502-72(c)(1). There is no evidence in the record which supports Alpha's allegation that the other SABER contracts are insufficiently similar to support a determination that SDBs

are capable and willing to perform the work at a price not exceeding the fair market price by more than 10 percent. Alpha also does not explain how the allegedly different contracting arrangement will affect SDBs dissimilarly from other firms in a manner which will make it likely that SDBs' prices will exceed the fair market price by more than 10 percent. Accordingly, we find no basis to object to the contracting officer's determination.

The protest is denied.



 James F. Hinchman  
General Counsel